**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1440 of 2003 (S/S)
Gyan Singh
vs.
State of Uttaranchal & others.

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 20.5.2004.

Initial of Judge

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No. 1440 of 2003 (SS)

Gyan Singh ..... ~~Petitioner~~

State of Uttaranchal & others ..... ~~Respondents~~

Sri M.C. Kandpal, Advocate for the petitioner
Standing counsel for the respondents.

Dated: May 20, 2004

**Hon'ble Rajesh Tandon J.**

Heard the learned counsel for the parties at Length.

The petitioner have filed the present writ petition for the issue of a writ order or direction in the nature of mandamus directing the respondents to treat the petitioner as regular employee of the department and pay them salary with all the benefits available to the regular employees of the department in the corresponding cadre.

Brief facts giving rise to the present writ petition are that the petitioner was appointed on daily wages on the posts of Beldar in the year 1985 and was appointed in the work-charge in the year 1988 in the Construction Division, P.W.D. Nainital.

That State of U.P. has issued a G.O. on 15.10.1997 in respect of regularization of the work charge employees of the department who are working continuously for the last several

years. according to G.O. work-charge employees who have rendered continuous satisfactory service of 5 years or more than 5 years till 31st March 1997 shall be regularized on the post held by them. The relevant clause of the G.O. is mentioned below:

कार्य प्रभावित कर्मियों जिनकी निरन्तर संन्तोप्रजनक सेवायें विभाग में दिनांक 31. 31.3.1997 को पॉच वर्प्र या इससे अधिक हो गयी हों एवं तब तक निरन्तर कार्यरत हो तथा जो वर्कचार्ज पर नियुक्त कर प्रतिबन्ध हेतु जारी कार्मिक विभाग के न्नासनादेधा सं0 1085/का–1991 दिनांकित 29.8.1991 के पूर्व से नियुक्त हो को उपलब्ध नियमित पदों/रिक्तियों स्थाई एवं अस्थाई दोनों प्रकृति के पद सम्मिलित हैं की सीमा तक नियमित कार्य प्रभावित अधिप्रछान में रखने हेतु प्रात्र माना जाय। इस नियमित कार्य प्रभारित कर्मचारियों को राज्य कर्मचारियों की भॉति सभी सुविधायें अनुमन्य हों।

The petitioner has stated that he has completed more than 5 years of service up to 31st of March 1997. On 3.7.1999 respondent no.2 has passed the order regularizing the services of work charge employees on the vacant posts in terms of G.O. dated 15.10.1997 and since then the petitioner has been continuously working on his post as regular employee and he is being paid salary.

All of a sudden respondent no.3 has passed the order on 21.4.2000 canceling the regularization order of the petitioner.

In pursuance of the aforesaid order of the petitioner was reverted from regular employee to work-charge employee. The petitioner has pointed out that the respondents have passed the order without giving any opportunity to the petitioner of being heard. Once order of regularization was passed in favour of the petitioner it was necessary that the person who is affected should have been heard before canceling the same.

According to the petitioner cancellation of the order will amount to civil consequences and as such opportunity of hearing should have been afforded to the petitioner before the impugned order is passed.

State of Uttaranchal has filed a counter affidavit and has stated that regularization of the petitioner was conditional but as there were limited number of posts approved by the Government, the Executive Engineer, therefore, was bound to revert the junior most work charge employees to their original status.

The petitioner has also relied upon the judgment of Apex Court in Writ Petition (Civil) No. 140 of 1989 Raj Narain vs. State of U.P. The Apex Court has observed as under:

*"We have carefully perused the proposed scheme in regard to work charge employees and we felt that clause 'D' which talks of regularization as per vacancies arising in regular posts on the establishment, a modification in necessary, it that, there should be a review of the cadre strength from year to year and based on the past requirement and continuity of work charge employees the cadre strength should be increased by a certain percentage of the work charged employees working over a period of time that may be fixed by the Government so that the pace of regularization is accelerated and in not the same as obtaining in the past, For example, if 100 work charged employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to year, therefore, becomes necessary because while of the one side the financial difficulties of the State has to be kept in view, on the side the welfare of the workman who have served the State on different projects has to be balanced. Concern is also*

*to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impression the State Government that if work charged employees have been on the establishment for long period that State should be liberal in the matter of revision of the cadre strength so that the benefit of regularization is available to a reasonably good number of work charged employees who have been associated with State Department for long periods."*

The petitioner has also placed reliance on the judgment of Prayag Narain and others vs. State of U.P. and others (1998) 3 UPLBEC 21251. In this case also the petitioners were employed in P.W.D. and were working on the posts of Beldar/Meth. All of them were initially engaged on daily wages and later on engaged on master roll therefore, they had prayed that the respondents be directed to pay equal pay for equal work.

The learned counsel for the petitioners has referred the judgment of Apex Court in the case State of Haryana and others vs. Piara Singh and others AIR 1992 SC 2130. It has been held as under:

*"So far as the work charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell- say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to*

*examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job.*"

On account of cancellation of regularization, the petitioner has suffered civil consequences, as held by the Apex Court in he case of State of Orissa vs. Dr. Binapani Dei and others AIR 1967 SC 1269. The Apex Court has observed that the administrative orders, which involve civil consequences, have to be passed consistently with the rules of natural justice. The observations of the Apex Court are quoted below:

"*An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every*

*citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."*

The Apex Court in the case D.K. Yadav vs. J.M.A. Industries Ltd; (1993) 3 SCC 259 has held as under:

*"It is a fundamental rule of law that no decision just be take which will affect the right of any person without fist being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehension connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edn. Pag 1487 defined civil rights are such as belong to every citizen of the state of country..... they include..... rights capable of being enforced or redressed in a civil action..... In State of Orissa vs. (Miss) Binapani Dei (1967) 2 SCR 625 this Court held that even an administrative order*

*which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence is support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principle of natural justice.*

*In State of W.B. vs. Anwar Ali Sarkar 1952 SCR 284: AIR 1952 SC 75 per majority, a seven, Judges Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must taken care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free from even*

*the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."*

The Apex Court in the case Shrilekha Vidyarthi vs. State of U.P. AIR 1991 SC 537 has held as under:

*"It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test is every state action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the filed of contract has to be borne in the mind.*

*……* *……*

*Every Stage action must be informed by reason and it follows that an act uniformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you.' This what men in power must remember, always.*

*Almost a quarter century back, this Court in S.G. Jaisinghani vs. Union of India (1967) 2 SCR 703, at pp. 718-19 : (AIR 1967 SC 1427 at p. 1434), indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice, in a passage as under:*

*"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of*

*law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should le made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law (see Dicey "Law of the Constitution" – Tenth Edn. Introduction ex). "Law has reached its finest moments" stated Douglas, J. in United Stated v. Wunderlick (1951-342 US 98: 96 Law Ed 113). "When it has freed man from the unlimited discretion of some ruler….. where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice, Discretion, as Lord Mansfield stated it in classic terms in the case of John Wikes (1770-98 ER 327) "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful."*

The cancellation orders could not have been passed without affording opportunity of hearing to the petitioner as held by this Court in Writ Petition No.236 (SS) of 2000, Pooran Singh vs. State of Uttaranchal and others, relying upon the Apex Court in Basudeo Tewari vs. Sido Kanhu University and others (1998) 8 S.C.C. 194 and Gajanan L. Parnekar vs. State of Goa and another(1998) 8 Hon'ble Mr. Justice P.C. Verma has held as under:

*"It is not disputed that the cancellation orders has been passed without any notice or pay in lieu of notice as required in condition No.2 of the regularization orders contained in annexure No. I, therefore, cancellation orders have been passed without affording any opportunity of hearing to the*

*petitioners. As the regularization orders were passed in implementation of the Scheme contained in Govt. order dated 15.10.1997 after due selection and the petitioners were regularised against the then existing posts, as such, the reason assigned for cancellation that posts have been reallocated by the Chief Engineer vide order dated 10.04.2000 is not acceptable.*

*  *  *  *  *  *

*On account of cancellation of regularization, the petitioners have suffered civil consequence, therefore, the cancellation orders could not have been passed without affording opportunity of hearing to the petitioners as held by the Apex Court in Basudeo Tewary vs. Sido Kanhu University and others (1998) 8 S.C.C. 194. In Gajanan L. Parnekar vs. State of Goa and another (1998) 8 S.C.C. the Apex Court held that recall of order of absorption without giving notice or opportunity of hearing is violative of principles of natural justice.*"

Admittedly the orders of cancellation have been passed without affording any opportunity to the petitioners.

However, if at all there is any requirement, liberty is given to the respondents to pass fresh orders in accordance with G.O. dated 15.10.1997, after giving opportunity to the petitioner.

Consequently, the writ petition is allowed and the order passed by the respondents canceling the regularization of the petitioner is quashed. No order as to costs.

**(Rajesh Tandon, J.)**

20.5.2004
*Dhyani